Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs	)	CC Docket No. 01-92
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF AT&T WIRELESS SERVICES, INC.

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October 18, 2002

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AT&T Wireless Services, Inc. ("AWS") provides the following comments in support of the petition filed by several other commercial mobile radio service ("CMRS") providers reaffirming that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of telecommunications under the Communications Act.

BACKGROUND

The Petitioners have provided the Commission with most of the background information on the interconnection and exchange of traffic between CMRS providers and independent incumbent local exchange companies ("ILECs"). The Petitioners accurately observe (as has the Commission) that CMRS providers and independent ILECs generally interconnect their networks indirectly and route traffic to each other through a Bell Operating Company ("BOC") tandem. Historically, the BOC often would also handle the

billing and collection between the carriers, charging the CMRS provider for both transport and termination and remitting the termination charges to the independent ILEC.[1] Following passage of the Telecommunications Act of 1996 ("1996 Act"), however, the BOCs were no longer willing to provide this billing and collection function. The BOCs generally provide a transiting service,[2] but the indirectly interconnected carriers using that service must make separate arrangements directly with each other with respect to compensation for terminating each others' traffic.

This change – in conjunction with the 1996 Act's requirements that reciprocal compensation be paid to CMRS providers and be cost-based – resulted in the de facto bill and keep arrangements that developed between CMRS providers and independent ILECs. The amount of explicit compensation that would be required to be paid in most cases simply does not justify the expense to either party of separately billing for exchanged traffic, much less negotiating (and, if necessary, arbitrating) an interconnection agreement. On the other hand, where the amount of explicit compensation to be paid justifies that expense to either party, CMRS providers and independent ILECs have negotiated interconnection agreements and billed each other for the traffic they exchange.

DISCUSSION

AWS shares the Petitioners' concerns that some independent ILECs are attempting to bypass the requirements established by Congress and the Commission that interconnecting carriers establish rates, terms, and conditions for exchanging local traffic through negotiated agreements, not tariffs. Such state tariffs are fundamentally

[1] At that time, of course, none of the ILECs compensated CMRS providers for terminating calls originated by landline end user customers, so such billing by the BOC was only on behalf of the other ILEC.
[2] "Transiting Service" is comprised of the tandem switching and any transport necessary for the BOC to accept a call from one party and deliver it to another party for termination.

inconsistent with both the letter and spirit of federal law, as the Petition describes. AWS supports the Petition and recommends that the Commission grant the relief requested.

AWS will not repeat the discussion in the Petition. Rather, AWS's comments are limited to providing additional support for a Commission finding that it has the authority to entertain the Petition and to grant the relief requested. With respect to that issue, these comments further demonstrate that the Commission has ample authority under the Communications Act to preclude ILECs from attempting to evade their obligations under federal law by filing state wireless interconnection tariffs.

Congress has granted the FCC broad jurisdiction over interconnection between carriers for the exchange of local telecommunications traffic.[3] The Commission also has plenary jurisdiction over CMRS-ILEC interconnection under sections 332, 201 and 2(b) of the Communications Act and may control both the physical and rate aspects of such interconnection. Under these statutory provisions, the Commission has the right to preempt state jurisdiction over CMRS-ILEC interconnection under sections 251 and 252 and the authority to prohibit ILECs from unilaterally establishing rates, terms, and conditions for such interconnection in state tariffs.

In the *Local Competition Order*, the Commission recognized sections 332 and 201 as a basis for jurisdiction over CMRS-ILEC interconnection, but chose to rely on sections 251 and 252 to govern the rates, terms, and conditions for such interconnection. In explaining its reasoning for this decision the Commission stated:

> By opting to proceed under sections 251 and 252 we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is

[3] 47 U.S.C. §§ 251 & 252.

> a basis for jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time to LEC-CMRS interconnection.[4]

The Eighth Circuit vacated portions of the *Local Competition Order* and associated rules on the grounds that the states had exclusive authority over those issues, but the court upheld the Commission's jurisdiction under sections 332 and 2(b) to adopt certain rules for CMRS-LEC interconnection:

> Because Congress expressly amended section 2(b) to preclude state regulation of entry and rates charged by Commercial Mobile Radio Service (CMRS) providers, see 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to CMRS providers, *i.e.* 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717, but only as these provisions apply to CMRS providers.[5]

Although the Supreme Court subsequently overturned the Eighth Circuit's jurisdictional analysis with respect to landline carriers, the Eighth Circuit's opinion nevertheless confirms the Commission's conclusion in the *Local Competition Order* that section 332 continues to provide the Commission with authority to regulate CMRS-ILEC interconnection after the passage of the 1996 Act and the adoption of sections 251 and 252. The Eighth Circuit decision also confirms that in those instances where the state had been given authority over interconnection matters generally (*e.g.*, sections 251 and 252), the Commission can, if it chooses, preempt that jurisdiction and issue rules of "special concern to CMRS providers" that the states must follow. Those rules can either provide

[4] *Local Competition Order* at ¶ 1023.
[5] *Iowa Utils Bd. v. FCC,* 120 F.3d 753, 800 n.21 (8th Cir. 1997), *vacated and remanded in part on other grounds AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S. Ct. 721 (1999).

the state with a continuing role with regard to the interconnection matter in question[6] or can remove all state discretion.[7] Perhaps most significantly for the issue at the heart of this Petition, the Eighth Circuit's decision unequivocally establishes that the Commission has the right to establish rates, terms, and conditions for CMRS-ILEC interconnection and to preempt any rates, terms, or conditions purportedly established in a state tariff.[8]

The D.C. Circuit recently affirmed this interpretation in *Qwest v. FCC*, in which the court upheld the Commission's right under section 332 to use its section 208 complaint procedures to enforce certain ILEC interconnection obligations to CMRS providers.[9] The D.C. Circuit specifically rejected the appellant ILEC's contention that the CMRS provider could enforce its interconnection rights only through the state controlled negotiation and arbitration provisions of section 252. Reading these two decisions together, it is unquestionable that under sections 332, 201 and 2(b) the Commission may establish and enforce rules regarding CMRS-ILEC interconnection, even in those areas where the states were given authority by the 1996 Act.

This is not to say, however, that the states have no jurisdiction over CMRS-ILEC interconnection or that sections 251 and 252 do not apply to CMRS providers. To the contrary, the 1996 Act established a comprehensive framework for interconnection between all types of telecommunications carriers. The Commission properly decided in the *Local Competition Order* that CMRS providers are "telecommunications carriers"

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[6] *See, e.g.,* 47 C.F.R. § 51.715 (state commissions to require rate "true-ups").
[7] *See, e.g.,* 47 C.F.R. § 51.703 (ILECs required to establish reciprocal compensation arrangements and prohibited from charging for traffic that originates on the ILEC network; states provided with no discretion).
[8] By citing to section 332(c)(3) and upholding the pricing rules, *Iowa Board* confirmed that section 332 preempted state regulations not only of end-user rates, but also of carrier-to-carrier rates. The Commission reached the same tentative conclusion in its *LEC-CMRS Interconnection NPRM*, but because of the passage of the 1996 Act never adopted that conclusion. *See LEC-CMRS Interconnection NPRM,* 11 FCC Rcd. 5020, FCC 95-505 at ¶ 111.

and "requesting carriers" subject to the rights and obligations established in sections 251 and 252.[10] Moreover, the 1996 Act gave states an important role in overseeing and managing the interconnection process for all telecommunications carriers, including CMRS providers.[11] That role, however, does not include reviewing, approving, or maintaining tariffs filed by ILECs purporting to establish rates, terms, and conditions for interconnection with CMRS providers.

No one disputes that the negotiation of individual interconnection agreements with each interconnecting carrier can be a cumbersome and expensive process, but that process has proven to be the best way to establish fair, just, and reasonable rates, terms, and conditions for interconnection. Before the adoption of sections 251 and 252, CMRS providers had the right to interconnect their facilities with ILEC facilities under the general provisions of sections 201 and 332. Although the Commission had interpreted those sections to afford CMRS providers many of the same substantive rights codified in sections 251 and 252, CMRS providers found it challenging at best to obtain interconnection at reasonable rates and terms prior to 1996.[12]

It was not until the passage of the 1996 Act and the adoption of rules in the *Local Competition Order* that CMRS providers began to make significant progress in obtaining interconnection at reasonable rates, terms and conditions from the ILECs. The Commission's establishment of pricing rules under sections 251 and 252 (even though those rules were stayed for a period of time by the Eighth Circuit) helped CMRS

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[9] *Qwest v. FCC*, 252 F.3d 462, 465 (D.C. Cir. 2001).
[10] *Local Competition Order* at ¶¶ 33, 1004, and 1012.
[11] Although the states must exercise their authority in a manner that is consistent with the Commission's rule. *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 385 (1999).
[12] *See generally CMRS Second Report and Order,* 9 FCC Rcd. 1411, FCC 94-31 at ¶¶ 224-227; *CMRS Interconnection Opinion*, 4 FCC Rcd. 2369.

providers take the first steps to reasonable rates. The codification of CMRS providers' status as "co-carriers" and the adoption of rules that specifically prohibit ILECs and the states from discriminating against wireless carriers have facilitated the negotiation and dispute resolution process. The detailed procedural mechanisms and timelines set forth in section 252 (including the "opt-in" provisions of section 252(i)) have helped to reduce transaction costs. While these advantages have not been realized without costs – including lack of uniformity between (and occasionally understanding of CMRS issues in) state commission determinations – Congress and the Commission have struck a balance between competing interests, rather than permit one class of carriers unilaterally to determine when, where, and how they will interconnect with other carriers.

Some independent ILECs, however, would turn back the clock to the days when they could dictate the rates, terms, and conditions under which they would exchange local traffic with CMRS providers. These ILECs may find compliance with sections 332, 201 and 2(b), as well as sections 251 and 252, of the Communications Act to be more cumbersome and, in some cases, more expensive, than filing a tariff. Congress and the Commission, however, have required *all* carriers exchanging local traffic to *negotiate* interconnection agreements governing their relationship, and Congress has given the Commission ample authority to enforce that requirement – including issuance of the declaratory order requested in the Petition.

CONCLUSION

For the foregoing reasons, as well as the reasons stated in the Petition, the Commission should grant the Petition and enter an order prohibiting ILECs from filing tariffs to establish rates, terms, or conditions for interconnection with CMRS providers.

Respectfully submitted,

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